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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 78 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ATUL PRODUCTS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 78 of 1988
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following four questions for the opinion of this Court under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") :-

"(1) Whether the deletion of addition (1) medical benefit, (2) house rent allowance and (3) personal accident premium u/s. 40(c) of the I.T. Act, 1961 is justified in law ?

(2) Whether cost of incomplete work is required to be taken into consideration for computing capital under sec. 80J of the I.T. Act, 1961 ?

(3) Whether in law and on facts all the tours undertaken during the previous year are required to be taken together for the purpose of Rule 6D of I.T. Rules, 1962 ?

(4) Whether in law and on facts allowance of full deduction u/s. 80HHC from gross total income without restricting it to the extent of business income is required to be granted ?"

2. The first question is in relation to three items. In relation to item No. 1 viz. medical benefits, following the decision of this Court in case of Gujarat Steel Tubes Ltd. vs. CIT, 210 ITR 358, we hold that the Tribunal was not justified in deleting the addition while computing the limit of disallowable sum under Section 40(c) of the Act. This part of the question is, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

In relation to the second item dealing with house rent allowance, following the decision in case of CIT vs. Mafatlal Gangabhai & Co.(P) Ltd., 219 ITR 644 (SC) we hold that the Tribunal was justified in law in holding that the said item should not form part of disallowable sum under Section 40(c) of the Act.

In so far as the third item relating to personal accident premium is concerned, we find from the assessment order that the said sum has in fact not been considered by the Assessing Officer while computing the disallowance under Section 40(c) of the Act and hence, it

is not necessary for us to answer in relation to the said item.

3. In so far as the second question is concerned, following the decision in case of CIT vs. Alcock Ashdown and Co. Ltd., 224 ITR 353, we hold that while computing the capital employed for the purposes of relief under Section 80J of the Act, the cost of incomplete work i.e. the work in progress has rightly been taken into consideration by the Tribunal. The second question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. In relation to question No. 3, we follow the decision in case of CIT vs. Arvind Mills Ltd., Income-tax Reference No. 134 of 1987 decided on 11.9.2001 and hold that the Tribunal was in error in taking all the tours undertaken during the previous year together for the purposes of Rule 6D of the Income-tax Rules, 1962. Question No. 3 is, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

5. In so far as question No. 4 is concerned, following the decision of this Court in case of CIT vs. Arvind Mills Ltd., Income-tax Reference No. 134 of 1987 decided on 11.9.2001, we hold that deduction under Section 80HHC of the Act is allowable in full without restricting the same to the extent of business income. Question No. 4 is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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